



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEABROOK PROFESSIONAL FIRE
FIGHTERS, LOCAL 2847, I.A.F.F.

Complainant

v.

TOWN OF SEABROOK

Respondent

CASE NO. F-0121:6

DECISION NO. 92-78

APPEARANCES

Representing Seabrook Professional Fire Fighters:

Thomas Hersey, Esq., Counsel

Representing Town of Seabrook:

Robert D. Ciandella, Esq., Counsel

Also appearing:

Steven A. Clark, Town of Seabrook

Everett Strangman, Local 2847

Jerry W. Brown, Local 2847

BACKGROUND

On June 14, 1991, the Seabrook Professional Firefighters Association, Local 2847, I.A.F.F., AFL-CIO (Union) filed unfair labor practice (ULP) charges against the Town of Seabrook (Town) alleging the Town failed to implement two arbitration awards, thereby violating RSA 273-A:5 I (h). The Town filed its answer on June 27, 1991. This matter was then set for hearing and heard by the PELRB on October 17, 1991.

FINDINGS OF FACT

1. The Town of Seabrook is a public employer as defined by RSA 273-A:1 X and employs fire fighters in its Fire Department.

2. The Seabrook Professional Fire Fighters Association, Local 2847 is the duly certified bargaining agent of fire fighters employed by the Town.
3. For all times pertinent to these proceedings, the Union and the Town were parties to a collective bargaining agreement (CBA) which contained a grievance procedure, the last day of which was final and binding arbitration.
4. Pursuant to the foregoing grievance procedure, Jerry Brown, a member of the bargaining unit, filed a grievance complaining against the Selectmen for having refused his request for a leave of absence. That grievance (AAA Case No. 1139-1240-90) was heard by Arbitrator Robert L. Stutz who rendered a decision on December 30, 1990, sustaining the grievance and awarding the grievant a one year leave of absence as requested.
5. By letter of February 4, 1991, Town Manager Steven A. Clark informed the Union's attorney that Town Counsel Robert Ciandella intended to appeal the decision of Arbitrator Stutz. Between February 4, 1991 and the hearing before the PELRB on October 17, 1991, there was no record of any such appeal being taken.
6. Pursuant to the foregoing grievance procedure, the Union filed a grievance alleging the Town failed to follow the CBA by failing to follow promotional guidelines contained therein when it filled the position of Fire Prevention Officer/Fire Works Administrator. That grievance (AAA Case No. 1139-1241-90) was heard by Arbitrator Richard G. Higgins who rendered a decision on January 26, 1991, sustaining the grievance, directing that the vacancy be reported, and that the filling of the position be consistent with the "Promotions" article of the CBA. That reposting was to occur February 15, 1991.
7. By motion dated February 15, 1991, counsel for the Town unilaterally filed a Motion for Clarification and Partial Reconsideration of Award. By letter of February 25, 1991, counsel for the Union objected to the forgoing motion. By letter of March 4, 1991, Arbitrator Higgins declined to take any further action in this case.

8. Between March 4, 1991 and the date of the hearing before the PELRB on October 17, 1991, there was no record of compliance with the award rendered by Arbitrator Higgins.

DECISION AND ORDER

This is one of those memorable occasions where the issue presented to us is a simple one: Was the contract violated when the Town failed to implement either or both of the foregoing arbitration awards? The parties negotiated a CBA. That CBA contained a grievance procedure ending with final and binding arbitration. Two grievances were filed. Both went to arbitration. Both arbitrators issued final and binding decisions neither of which was implemented by the Town. Simply stated, that conduct is a breach of the grievance procedure contained in the contract and, accordingly, is an unfair labor practice. "Where arbitration is entered into pursuant to a CBA, failure to abide by the resulting arbitration award may constitute a breach of the CBA...and thus an unfair labor practice." Board of Trustees v. Keene State College Educ. Assn., 126 N.H. 339 at 341-342 (1985)

Our responsibility is not to rehear the two pending arbitration cases on the merits. Instead, we must evaluate the Town's conduct relative to the CBA and RSA 273-A. In doing so, we find that conduct to have breached the CBA and to be an unfair labor practice under RSA 273-A:5 I (h). The Town is directed to implement the two foregoing arbitration awards forthwith.

So ordered.

Signed this 28th day of April, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and E. Vincent Hall present and voting.